

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMES W DENT
Claimant

APPEAL NO. 07A-UI-09702-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERIVIC INC
Employer

OC: 09/09/07 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Merivic, Inc. (employer) appealed a representative's October 5, 2007 decision (reference 01) that concluded James W. Dent (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Jim Cavinder, the welding foreman, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for nondisqualifying reasons?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2006. (Administrative record) The claimant worked as a full-time welder. Cavinder supervised the claimant. The claimant worked with other welders who were from Mexico. The employer did not notice any problems between the claimant and his co-workers.

In mid-February 2007, Cavinder became ill and was unable to work awhile. A co-worker of the claimant's who came from Mexico was put in charge of the welders during Cavinder's absence. The claimant worked one day under his co-worker's supervision. The next day, February 15, 2007, (administrative record) the claimant came to work, saw that Cavinder was still absent and left work. The claimant told other co-workers he would not work for a Mexican.

The employer tried to contact the claimant to find out if he was ill or why he had not reported back to work. When the claimant had not returned to work or contacted the employer for over a week,

Cavinder took his tools and last paycheck to the claimant's home. The claimant then told Cavinder he was tired of working and would not work for a Mexican.

The claimant established a claim for unemployment insurance benefits during the week of September 9, 2007. He filed claims for the weeks ending September 15 through October 27, 2007. He received his maximum weekly benefit amount of \$347.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts presented during the hearing establish that the claimant voluntarily quit his employment by failing to return to work. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits for reasons that do not qualify him to receive benefits when he leaves employment because he is unable to work with other employees. 871 IAC 24.25 (6). Based on the facts presented during the hearing, the claimant quit for personal reasons that do not qualify him to receive unemployment insurance benefits. Therefore, as of September 9, 2007, he is not qualified to receive unemployment insurance benefits. (The record does not indicate the claimant requalified by earning a minimum of \$3,470.00 in wages after he quit working for the employer but before he established his claim during the week of September 9, 2007.)

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending September 15 through October 27, 2007. The claimant has been overpaid and must repay a total of \$2,429.00 in benefits he received for these weeks.

DECISION:

The representative's October 5, 2007 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 9, 2007, until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending September 15 through October 27, 2007. The claimant has been overpaid and must repay a total of \$2,429.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw